

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE A.K.BASHEER**

**MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929**

**WP(C).No. 11140 of 2005(A)**  
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**PETITIONER:**  
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**N.S.PRASANTH,S/O.LATE C.R.SIVAPPAN,  
AGED 22 YEARS,NIVARTHIL HOUSE,  
VATTAKKAL P.O.,CHERTHALA.**

**BY ADV. SRI.PAULSON THOMAS**

**RESPONDENTS:**  
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- 1. STATE OF KERALA,REPRESENTED BY THE  
SECRETARY TO GOVERNMENT,GENERAL EDUCATION  
DEPARTMENT,SECRETARIAT,THIRUVANANTHAPURAM.**
- 2. DIRECTOR OF PUBLIC INSTRUCTION,  
THIRUVANANTHAPURAM.**
- 3. DIRECTOR OF HIGHER SECONDARY EDUCATION,  
HOUSING BOARD BUILDINGS,THIRUVANANTHAPURAM.**
- 4. DISTRICT EDUCATIONAL OFFICER,  
CHERTHALA.**
- 5. THE MANAGER,KANDAMANGALAM H.S.S.,  
KADAKKARAPPALLY P.O.,CHERTHALA.**

**BY GOVERNMENT PLEADER SRI.A.J.VARGHESE  
SRI.V.A.MUHAMMED  
SRI.K.E.HAMZA**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 06/08/2007, ALONG WITH WPC NO. 10864 OF 2006 WPC NO. 23190 OF 2007  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

W.P.(C) NO.11140/2005

APPENDIX

PETITIONERS EXHIBITS

EXT.P1:- COPY OF THE DEATH CERTIFICATE OF THE PETITIONER'S FATHER ISSUED BY REGISTRAR OF BIRTH'S AND DEATHS.

EXT.P2:- COPY OF THE LEGAL HEIR CERTIFICATE ISSUED BY THE TAHSILDAR.

EXT.P3. SERIES :- COPIES OF THE QUALIFICATION CIERTIFICATES OF THE PETITIONER.

EXT.P4:- COPY OF THE ORDER DT. 22.11.03 ISSUED BY THE DISTRICT EDUCATIONAL OFFICER.

EXT.P5:- COPY OF THE ORDER DT. 18.11.2004 ISSUED BY THE DEPUTY DIRECTOR ALAPPUZHA.

RESPONDENT'S EXHIBITS

EXT.R5(a):- COPY OF THE LETTER OF THE MANAGER DT. 16.10.03.

EXT.R5(b):- COPY OF THE LETTER OF THE PETITIONER DT. 21.10.2003.

EXT.R5(c):- COPY OF THE G.O.(RT) NO.4268/03/G. HED. OF THE GOVERNMENT DT. 20.10.03.

EXT.R5(d):- COPY OF THE DECISION REPORTED IN 2003 (1) KLT S.N. PAGE 33 (CASE NO.45) DT. 2.7.02.

EXT.R5(e):- COPY OF THE G.O.(RT) NO.939/03/G. EDN. OF THE GOVERNMENT DT. 7.3.03.

EXT.R5(F):- COPY OF THE JUDGMENT IN WP(C) NO.37638/03. DT. 23.8.03.

EXT.R5(g):- COPY OF THE ARGUMENT NOTES OTO THE MANAGER DT. 25.9.04.

EXT.R5(h):- COPY OF THE REVISION PETITION FILED BEFORE THE GOVERNMENT DT. 7.5.05.

EXT.R5(i):- COPY OF THE JUDGMENT IN OP. NO.12840/03. DT. 6.4.05.

EXT.R5(j):- COPY OF THE LETTER OF THE MANAGER DT. 27.6.05.

/TRUE COPY/

P.S. TO JUDGE

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**W.P (C).Nos. 11140/2005, 10864/2006  
& 23190 of 2007**  
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**Dated this the 6<sup>th</sup> day of August, 2007.**

**Judgment**

These three writ petitions are being disposed of by this common judgment since the issues involved in them are common and closely inter-related. W.P(C) 10864/2006 is treated as the leading case and reference shall be made in the judgment to the parties and documents therein, if not indicated otherwise.

2. Petitioner is the Manager of Kandamangalam Higher Secondary School at Cherthala in Alappuzha district. Respondent No.5 sought compassionate appointment under Rule 51B of Chapter XIV-A KER consequent on the death of his father Sri.Sivappan who died in harness on December 13, 2000 while he was working as High School Assistant. According to respondent No.5 an application seeking appointment was submitted by him before the Manager on November 17, 2001. Thereafter his mother had also submitted an application in this regard on July 8, 2003. To make a long story short, the District Educational Officer, Cherthala

by Ext.P8 order dated November 22, 2003 upheld the claim of respondent No.5 and directed the Manager to appoint him in the existing/next arising vacancy on or after July 8, 2003 “in any of the categories of HSA (Physical Science/UPSA/Clerk/Attender/Last Grade Servant both in High School and Higher Secondary School section”.

3. In this context it may also be mentioned that the Manager had, in the meanwhile, appointed respondent No.6 as UPSA in a maternity leave vacancy for the period from August 12, 2003 to November 11, 2003. Understandably, the above appointment made by the Manager was questioned by respondent No.5 contending inter alia that he ought to have been given appointment in the above vacancy in preference to respondent No.6. The D.E.O while accepting the above contention held that respondent No.6 not being a Rule 51A claimant, she had no preferential right over the Rule 51B claimant ( respondent No.5). The above order was confirmed by the Deputy Director of Education, Alappuzha and the appeal preferred by the Manager was rejected as could be seen from Ext.P9. But the Director of Public Instruction, Thiruvananthapuram reversed the above two orders and held that the appointment of respondent No.6 in the leave vacancy was liable to be

approved, as requested by the Manager.

4. Ultimately the entire issue was considered by the Government as directed by this Court after hearing the parties concerned. The Government in its order dated March 6, 2006, a copy of which is on record as Ext.P13, held that respondent No.5 was entitled to get appointment as UPSA in the vacancy that had arisen in the school in the year 2003. It was further found that approval of appointment of respondent No.6 against the short term leave vacancy which arose in 2003 could be considered only after allowing the earlier legitimate claim of respondent No.5.

5. The above order is under challenge in the writ petition filed by the Manager. Respondent No.6 has also challenged the said order in WP.No.23190/2007 preferred by her, while respondent No.5 in WP.No.11140/2005 seeks an appropriate direction to the Manager to appoint him in terms of Rule 51B of Chapter XIV-A KER and in compliance of the order passed by the authorities in any of the existing/arising vacancies in any of the categories of HSA(Physical Science)/UPSA/Clerk/Lab Asst. etc.

6. It is on record that the Manager had appointed respondent

No.5 as a full time menial with effect from November 28, 2005. It is the case of the Manager that respondent No.5 had given an undertaking that all pending litigations would be withdrawn by him as and when the Controlling Officer approved his appointment as full time menial. Manager has produced a true photocopy of the said undertaking (Ext.P12) which was allegedly executed by respondent No.5.

7. However it is contended by respondent No.5 that he had never given up his legitimate and statutory claim for appointment to the post of HSA/UPSA in the school. What he had stated in Ext.P12 was that he would withdraw all pending litigations. At that time only the present writ petition (WP.NO.11140/2005) was pending consideration before this Court.

8. It is also contended by respondent No.5 that the Manager cannot now turn round and say that he had not received the application preferred by him on November 21, 2001 as well as the one submitted by his mother on his behalf on July 8, 2003. In fact the Manager had unambiguously admitted receipt of the two applications before the statutory authorities as could be seen from Ext.P8 and other records. But the Manager had tried to wriggle out of his statutory liability by

trying to project some lame excuses which were rightly rejected by the D.E.O., the Deputy Director of Education and ultimately by the Government.

9. The admitted position being that respondent No.5 had got requisite qualifications to be appointed as a High School Assistant (He is a graduate in Chemistry with B.Ed) when the maternity leave vacancy had arisen in the school on August 12, 2003 the Manager ought to have appointed respondent No.5 in the said vacancy. Instead, the Manager had given appointment to respondent No.6 overlooking the statutory claim of respondent No.5. The D.E.O., the Deputy Director of Education and the Government had found that the Manager was not justified in overlooking the statutory right of the petitioner to get appointment under Rule 51B Chapter XIV-A KER. It is true that in Ext.P10 order the Director of Public Instruction had taken a different view and held that it was “learned” that respondent No.5 had not preferred any application for appointment with “full documental enclosures” before the Manager in time. The said order has been set aside by the Government in Ext.P13.

10. It is brought to my notice that respondents 5 and 6 had

already been appointed by the Manager as UPSA with effect from June 5, 2006 and that both of them are working in the school now. Learned counsel for respondent No.6 contends that in view of the above subsequent development, respondent No.5 cannot have any subsisting grievance. But it is contended by respondent No.5 that if the action of the Manager in appointing respondent No.5 in the leave vacancy is held valid and her appointment is allowed to be approved by the Department, serious prejudice will be caused to respondent No.5. It is pointed out by respondent No.5 that the first vacancy of UPSA which arose in the school in the year 2006 is a retirement vacancy and the second one originated as a result of creation of an additional new division in the U.P section. But the second vacancy has not yet been sanctioned by the Government. The Manager can appoint respondent No.6 against the second vacancy, if he so chooses. The first vacancy under all circumstances should be given to respondent No.5, it is contended. It is also submitted by the learned counsel that by virtue of provisions contained in Rule 1(1) Note (1) read with Rule 43 in Chapter XIV-A KER, respondent No.5 is entitled to be appointed as UPSA against the first vacancy that arose in 2006. By giving

appointment to respondent No.6 against the first vacancy, the Manager has tried to frustrate the statutory right of respondent No.5. His attempt is to confer the status of Rule 51A claimant on respondent No.6 by getting approval for her appointment as maternity leave substitute. There is considerable force in the above contention raised by respondent No.5 . In my view respondent No.5 is justified in contending that he ought to have been appointed against the first vacancy that arose on or after July 8, 2003, as held by the statutory authorities.

11. Having heard learned counsel for the parties and having perused the entire materials available on record, I do not find any illegality or irregularity in the order passed by the Government. In my view, Ext.P13 order is perfectly valid and legal. The statutory authorities had found, in my view correctly, that respondent No.5 had submitted the application for compassionate appointment in terms of the relevant rules then in force. It is true that he had applied for the post of menial/Clerk. At that time (in the year 2001) he was not qualified to hold the post of teacher. But later he had acquired the requisite qualifications. In July 2003 an application was submitted on his

behalf. Later he had submitted another application enclosing all the requisite documents. In other words, the defects in the application had been cured. As rightly noticed by the statutory authorities, respondent No.5 was entitled to change his preference under the Scheme. He had exercised that option. The statutory authorities had adverted to all the relevant aspects with reference to the materials placed before them. I do not find any reason to take a different view. Therefore the challenge against Ext.P13 order is rejected .

12. In the result W.P.No.10864/2006 and 23190/2007 are dismissed. W.P.No.11140/2005 is allowed .

13. The Manager shall comply with the direction issued by the Government in Ext.P13 order and issue appropriate orders in terms thereof. This shall be done as expeditiously as possible, at any rate within one month from the date of receipt of a copy of this judgment.

**A.K. Basheer**  
**Judge.**

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